IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.14841 of 1999

Between:

M/s Madras Cements Limited, having its registered office at

Auras Centre, 98-A, Dr. Radhakrishnan Salai, 5th Floor,
Chennai-600 004, Rep. by its Authorised Signatory,

Sri P.K. Rama Subrahmanyam.

..... PETITIONER

AND

1 Government of India, rep. by Joint Secretary, Ministry of Mines

(Revisional Authority), Shastry Bhawan, New Delhi-110 001.
2 M/s Andhra Cements Limited, rep.by its Asst. Manager (Legal) and

Authorised Signatory,Sri K. Sridhar Rao, II Floor, Chandralok
Complex, 111, Sarojini Devi Road, Secunderabad-500 003.
3 State of Andhra Pradesh, rep. by Secretary, Department of

Industries and Commerce (Mines II), Secretariat, Hyderabad.
4 Director of Mines and Geology, Welfare Centre, Masab Tank,

Hyderabad.
5 Assistant Director of Mines and Geology, Maruthi Nagar,

Vijayawada, Krishna District, AP.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue Writ of Certiorari or any other appropriate Order or direction calling for the records relating to the order of the first respondent dt.3-6-1999 bearing No.35/99 and quash the same.

Counsel for the Petitioner: MR.S. SURYANARAYANA PRASAD representing MR.VENKATESWARA RAO VELUTURUMALLI

Counsel for the Respondent No.1: Mr. A. RAJASEKHAR REDDY, CENTRAL GOVERNMENT STANDING COUNSEL

Counsel for the Respondent No.2: Mr. S. R. ASHOK, representing MR. Y.SRINIVASA REDDY

Counsel for the Respondent Nos.3 to 5: G.P. FOR INDUSTRIES

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.14841 OF 1999

ORDER:

M/s. Madras Cements Limited, a company incorporated under the Companies Act, 1956, is the petitioner herein. The present Writ Petition is filed challenging the order of first respondent dt.3.6.1999 in revision application file No.3/10/94/RCI/RCII, dt.3.6.1999 praying for a Writ of Certiorari to quash the same. By impugned order first respondent while setting aside the order of third respondent in G.O.Ms.No.210, dt.6.5.1994, remanded the matter to third respondent with a direction to consider the final order of Board for Industrial and Financial Reconstruction (BIFR), dt.6.6.1994 and then allow the petitioner company till 31.7.1999 to execute renewal of mining lease document in the light of the State Government order in G.O.Ms.No.452, dt.15.9.1983 after due observance of the provisions of the Rules.

Second respondent, namely, M/s.Andhra Cements Limited is carrying activities of manufacture of cement at Dachepalli in Guntur District. It has cement plant apart from mining area for quarrying limestone. But it is alleged that it is not carrying manufacturing activity nor does it have any cement plant in any other location in the State of Andhra Pradesh. Initially, in 1938, Zamindar of Jayanthihpuram granted lease of Acs.700.00 of land situated in Jayanthipuram Village for a period of 99 years. After coming into force of Mines and Minerals (Regulation and Development) Act, 1957 (hereafter called, the Act), the Government of Andhra Pradesh in exercise of its powers restricted grant of mining lease over an area of Acs.628.88 and also reduced the validity period upto 30.6.1961. Third respondent renewed the lease for a period of twenty years on 6.12.1961. After expiry of the said period, second respondent made an application seeking second renewal for a period of fifteen

years. The Government cannot grant renewal as sought. But, the Government issued orders in G.O.Ms.No.452, dt.15.9.1983 proposing to renew the lease for a further period of twenty years for an extent of Acs.454.04. The Government imposed condition that second respondent company should obtain consent of pattadars at the time of execution of lease deed and should execute lease deed within time limit specified in Rule 31 of the Mineral Concession Rules, 1960 (the 'Rules' for brevity). Aggrieved by the same, second respondent filed Writ Petition No.4659 of 1984 before this Court insofar as G.O.Ms.No.452, dt.15.9.1983 imposes condition that second respondent should obtain consent from the pattadars. Second respondent also filed a Revision Application No.2(94)/84-MV before first respondent against G.O.Ms.No452, dt.15.9.1983. By order dt.16.6.1987 first respondent disposed of the revision directing the State Government to execute lease deed subject to second respondent obtaining consent of pattadars within a period of one year from the currency of the lease. In the meanwhile, this Court disposed of the Writ Petition No.4659 of 1984 on 20.8.1992 directing the State Government to execute lease deed within a period of two months. The pattadars were given liberty to establish their rights in a competent Civil Court. Fifth respondent by letter dt.4.2.1993 required the second respondent to comply with mandatory and statutory conditions and directed to submit various documents for execution of lease deed. Second respondent by letter dt.5.1.1994 sought for time upto 31.1.1994 and requested time.

The petitioner further alleged that second respondent ceased to carry on mining activities and in violation of orders of this Court proceeded to supply limestone to other entities. Fifth respondent inspected the area and submitted a report to the effect that no mining activity is being carried on in the lands situated at Jayanthipuram. In view of this, third respondent passed orders in G.O.Ms.No.210, dt.6.5.1994 revoking the orders in G.O.Ms.No.452, dt.15.9.1983 by which renewal was granted. Challenging the same, second respondent filed a writ petition being W.P.No.11162 of 1994. But, the same was dismissed as withdrawn giving liberty to second respondent to institute fresh Writ Petition. But, second respondent filed a revision petition before first respondent. The State Government before revoking the renewal issued a notice of hearing to second respondent on 6.4.1994 asking them to appear before the Hon'ble Minister on 12.4.1994. Second respondent issued telegrams on 11.4.1994 seeking adjournment of the hearing and thereafter did not appear before the Government by reason of which G.O.Ms.No.210, dt.6.5.1994 was issued cancelling the grant. Second respondent failed to comply with the conditions imposed by third respondent. However, the revisional authority entertained revision on the ground of violation of principles of natural justice. The order of remand suffers from error of fact which is apparent on the face of record and is not sustainable.

Respondents 3 to 5 have filed a common counter affidavit through fourth respondent supporting the impugned order of first respondent. Second respondent filed elaborate counter. It is not necessary to advert to the same in detail. Suffice to notice that while stating that second respondent was not given reasonable opportunity by the Government of Andhra Pradesh before passing revocation order, it is alleged that when the Registered Office of Andhra Cements as well as agent (mines) was located at Dachepalli, the order was served on 11.4.1994 to the security jawan of the

factory at Vijayawada and thus principles of natural justice are violated.

Learned Senior Counsel for the petitioner Sri S.Saryanarayana Prasad contends that while remanding the matter to the State Government, the Central Government could not have directed the former as to how to exercise its power while granting renewal of the lease. It is his contention that the Central Government directed the State Government to pass orders afresh taking into consideration the order of the BIFR dt.6.6.1994 which is no more in existence by reason of subsequent order passed by BIFR recommending winding up of second respondent company. He would submit that the appellate authority or the revisional authority cannot issue any directions regarding the method and manner of disposing of the matter while passing an order of remand. It is also his submission that in spite of repeated opportunities, second respondent did not execute lease deed in time and therefore it was proper for the State Government to revoke the renewal of lease. He would urge that second respondent failed to execute lease deed within six months after the grant of renewal and therefore it was improper for first respondent to remand the matter for fresh consideration by the State Government. Lastly he would urge that the petitioner company has purchased part of the mining area from the original pattadars and therefore unless and until the consent of the petitioner is obtained lease in favour of second respondent cannot be renewed. He placed reliance on the decision of the Supreme Court in **Pallava Granites Industrial India (P) Ltd. v. Government of Andhra Pradesh**.

Learned Senior Counsel Sri S.R.Ashok appearing for second respondent would urge that the Government passed orders in G.O.Ms.No.210, dt.6.5.1994 revoking the renewal of lease without adequate opportunity and therefore first respondent is justified in remanding the matter to the State Government. He contends that when the State Government considers the matter as regards the revocation order or renewal granted in G.O.Ms.No.452, dt.15.9.1983, it is always open to the Government to consider subsequent events. Before BIFR, State Government agreed to renew/grant lease for limestone mining under the provisions of the Act, and therefore Central Government did not commit any error in directing the State Government to consider the order of BIFR dt.6.6.1994. He also contends that the petitioner is not a necessary party to be given right of audience by the State Government before considering the grant of renewal or revocation of such grant. Under Rule 22(3)(i)(h) of the Rules the consent of the pattadars is not required at the time of renewal of lease. He placed reliance on the judgment of the Division of this Court in **S.R.V.V.S.V.R.G.Yachendra v. Union of India.**

The only point that arises for consideration is whether the Central Government while passing impugned order in exercise of their powers under Section 30 of the Act read with Rule 55 of the Rules was not justified in remanding back matter to the State Government with a direction to consider the order of BIFR and allow the petitioner time to execute renewal of mining lease in the light of the orders in G.O.Ms.No.452, dt.15.9.1983 ?

The admitted facts are the following. The petitioner obtained lease for a period of ninety nine years from Raja and Zamindar of Jayanthipuram in 1938. After coming into force the Act, Government of Andhra Pradesh reduced the period of lease effective till 30.6.1961. The lease was extended on 5.12.1961 by orders of the Government in G.O.Ms.No.1771 though the area of mining lease got reduced. The lease was to subsist till 4.5.1982. The Government of Andhra Pradesh on an application made by second respondent renewed the lease by G.O.Ms.No.452, dt.15.9.1983 calling it as second renewal of mining lease for a period of twenty years from 5.5.1982 over an extent of Acs.445.04 in various survey numbers of Jayanthipuram Village. Second renewal was subject to the provisions of the Act, the Rules made thereunder, subject to conditions in Form 'K' (format of lease deed) and also subject to additional conditions specified in the Annexure to the said order. As per the renewal order of the Government of Andhra Pradesh, the grantee was to execute the lease deed within time limit specified in Rule 31 of the Rules and the renewal was subject to grantee producing consent of the pattadars at the time of execution of lease deed. Second respondent started litigation with regard to this condition and filed revision as well as Writ Petition. The Central Government dismissed the revision. This Court disposed of the writ petition being W.P.No.4659 of 1984 on 20.8.1992 holding that the requirement of production of pattadars consent has no legal sanction and that pattadars have to work out their remedies in Civil Court.

In the meanwhile, second respondent sought reference before BIFR under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). By order dt.6.6.1994, BIFR approved the scheme of rehabilitation after hearing lending financial institutions, the Government of Andhra Pradesh and all others concerned with rehabilitation. The scheme noticed that the Government of Andhra Pradesh would renew mining lease under the provisions of the Act and would not to give any mining lease to third pearties near the cement plant of second respondent. Be that as it is, the Government of Andhra Pradesh on a report submitted by the lower authorities initiated action for revocation of sanction for renewal of lease. A show cause notice was issued on 6.4.1994 and was sent to factory of second respondent in Vijayawada. There is no denial of the fact that notice was not sent to the registered office at Secunderabad and second respondent did not appear during personal hearing on 12.4.1994. But, the Government of Andhra Pradesh passed orders revoking G.O.Ms.No.452 under the provisions of Rule 31(1) of the Rules for failure on the part of second respondent to execute lease deed within time and for non-working of mineral by shifting the entire machinery to Dachepalli Cement Factory. Government of Andhra Pradesh also issued G.O.Ms.No.220, dt.17.5.1994 under Rule 59(1)(a) of the Rules declaring that mining area in Jayanthipuram will be available for grant under mining lease after expiry of thirty days from the date of publication of such notice. In pursuance to the said notification, petitioner, second respondent and M/s.Hemadri Cements filed applications seeking grant of lease in the mining area. These applications are still pending. Second respondent filed Writ Petition No.11162 of 1994 challenging the both the orders, G.O.Ms.No.210, dt.6.5.1994 revoking lease and G.O.Ms.No.220, dt.17.5.1994 notifying regrant. The second respondent also preferred a revision application under Section 30 of the Act

before the Central Government on 15.6.1994 and subsequently withdrew the writ petition being W.P.No.11162 of 1994, on 14.7.1994. Petitioner herein got impleaded in the revision application of second respondent, and first respondent heard the representatives of petitioner company.

Before the revisional authority, second respondent contended that the revocation order is violative of orders of this Court dt.20.8.1992 in W.P.No.4659 of 1984 that in view of the fact that company was declared sick by BIFR revocation order is bad in law as no such proceedings could have been validly taken as per provisions of SICA because all proceedings remain suspended during the pendency before the BIFR, that the Government violated the provisions of Section 22(3) of the SICA, that mere declaration as sick company cannot be considered as an of omission in execution of the lease deed and open mines, that the revocation order is based on false and malicious premise that the petitioner shifted all machinery from Jayanthipuram to Dachepalli and that the State Government failed to give adequate and proper notice before passing award thereby violating the principles of natural justice. Before the Central Government, the State Government submitted comments *inter alia* to the effect that second respondent is having manufacturing units at Dachepalli in Guntur District and Visakhapatnam, that second respondent is having sufficient mining lease in Guntur District to cater to the needs of their cement plants at Dachepalli, that second respondent sold limestone to Madras Cements and that pattadars objected for leasing out the area to the petitioner. It was also contended by the State Government that second respondent has no cement plant in the vicinity of leased area, that regrant was notified as petitioner failed to get consent of pattadars. State Government also informed the Central Government that they would provide reliefs and concessions in accordance with the orders of BIFR dt.6.6.1994 in Case No.33/1998, if second respondent produces consent letters from pattadars.

First respondent considered four issues, namely, (i) Whether the period mentioned in the third prayer in the revision application being over, the revision application has become infructuous ? (ii) Whether the revision application has become infructuous because the petitioner withdrew Writ Petition No.11162 of 1994 from the Andhra Pradesh High Curt ? (iii) Whether petitioner was afforded reasonable opportunity before the revocation order was passed by the State Government ? and (iv) Whether the revocation order was justified in the light of the proceeding before the BIFR ? On issues (i) and (ii) first respondent came to a conclusion that by reason of lapse of time, revision application has not become infructuous. On the fourth issue as to whether revocation order was justified in the light of the proceedings before BIFR, while holding that as the lease has not come into existence after renewal order was passed in 1983, and therefore Section 22(1) of the SICA would not be attracted. First respondent, however, felt that the State Government should take the rehabilitation scheme approved by BIFR on 6.6.1994 into consideration. On the third issue, as to whether second respondent was afforded reasonable opportunity, first respondent after referring to the decision of the Supreme Court in **Maneka Gandhi v. Union of India**, and judgment of this Court in **C.M.Ramnath Reddy v. State of A.P.**, opined that proper opportunity of hearing must be afforded before mining lease revoked by the State Government under Rule 31 of the Rules. First respondent in paragraphs 41

and 42 observed as under:

In this case, it has also to be kept in mind that it is not the case of execution of a fresh grant of mining lease, but the execution of renewal of a mining lease in a case in which the petitioner company had been engaged in mining operations for well over 50 years and claims to have invested substantial sums of money in mine development etc. It has also to be borne in mind that the Hon'ble High Court of Andhra Pradesh, vide their Order quoted in para 30, had cast a responsibility on the State Govt. to get the renewal of mining lease document executed within 2 months of the receipt of the Order and also that proceedings were pending before the BIFR in the first half of 1994.

This peculiar background of the case required the State Govt. to act with extreme care while proceeding under rule 31 of the Rules and to afford a reasonable opportunity to the petitioner before revoking the mining lease of the petitioner company, which we are afraid, has not been done by the State Govt.

There cannot be any dispute – indeed learned Senior Counsel for petitioner does not dispute this; a person who is granted lease or granted renewal of lease has inchoate right or legitimate expectation for such person would be allowed to enjoy lease for the stipulated period. Though Rule 31 empowers the State Government to revoke the order granting lease for the default on the part of the applicant to execute lease deed, the legitimate expectation cannot be denied without adequate opportunity as there could be different circumstances under which a grantee cannot be in a position to execute the lease deed within six months. In this case, second respondent was directed by the Government of Andhra Pradesh to obtain consent of pattadars. There was some litigation in this regard. After the judgment of this Court in W.P.No.4659 of 1983, petitioner approached the Assistant Director of Mines and Geology for initiating steps for executing lease deeds. There is material on record to that effect. In the meanwhile, proceedings were initiated under Rule 31 of the Rules and the grant of lease was revoked. There is no denial that third respondent did not serve notice of hearing at the registered office of second respondent, but was served at the factory at Vijayawada by which date the factory was closed as the company was declared as sick company. Therefore, I do not find any infirmity in the order passed by first respondent in setting aside G.O.Ms.No.210, dt.6.5.1994. However, as rightly contended by learned Senior Counsel for the petitioner, in the facts and circumstances of this case, especially when third respondent notified the availability of area for re-grant in G.O.Ms.No.220, dt.17.5.1994, pursuant to which petitioner and second respondent and another applied, first respondent ought not to have made observations which tend to regulate the exercise of discretion by third respondent. The superior forum can always clarify the position of law while making an order of remand, but on the question of facts ordinarily a superior forum cannot direct inferior forum to appreciate facts and evidence in the manner as perceived by superior forum. If such an order of remand is passed, fresh consideration by the inferior forum would be rendered an empty formality depriving the contestants to seek fresh consideration.

It is brought to the notice of this Court that for one reason or the other, the scheme of

rehabilitation was not given full effect vide order of BIFR dt.6.6.1994 under Section 18(4) of SICA. On 14.12.2001 BIFR declared that the scheme sanctioned on 6.6.1994 has failed and directed Industrial Development Bank of India (IDBI) to issue advertisement for change of management. Second respondent preferred an appeal before Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which by order dt.16.4.2002 set aside the order of BIFR dt.14.12.2001 and directed second respondent to deposit an amount of Rs.1,00,00,000/- (Rupees one crore only) per month in escrow account and IDBI was directed to prepare modified rehabilitation scheme based on One Time Settlement (OTS) proposal. Second respondent and its promoters failed to comply with the directions of AAIFR and therefore BIFR by order dt.14.2.2003 again declared the scheme sanctioned on 6.6.1994 failed and considered the matter after issuing notice to second respondent. Ultimately, by order dt.5.4.2004, BIFR, New Delhi, passed orders under Section 20(1) of the SICA recommending for winding up of second respondent company. Feeling aggrieved by the same, second respondent preferred an appeal before AAIFR being Appeal No.109 of 2004. By order dt.21.5.2004 a Bench of AAIFR stayed operation of the order of BIFR dt.5.4.2004. This brief narration of proceedings before BIFR would show that rehabilitation scheme sanctioned on 6.6.1994 in Case No.33/90 by BIFR is no more in existence and second respondent is already ordered to be wound up. This is a relevant circumstance while third respondent reconsiders the question regarding the revocation of grant of renewal of lease in favour of second respondent.

There was a considerable debate before this Court as to the consent of pattadars (be it noted that the petitioner also claims to be pattadar in respect of Acs.150 of land forming part of mining area). The Supreme Court in **Pallava Granites Industrial India (P) Ltd. v. Government of Andhra Pradesh** (supra) considered Rule 22(3)(i)(h) of the Rules and Ruled that the third proviso to Rule 22(3)(i)(h) carves out an exception in case of renewal and no further consent would be required where consent has already been obtained during the grant of lease. This also a relevant factor which has to be considered by third respondent. As this Court is scrutinizing order of remand, it is not proper to express any opinion on this aspect.

Learned counsel for second respondent also argues that as the question before third respondent would be whether or not second respondent was justified in not executing the lease deed within the time stipulated as per Rule 31 of the Rules in relation to grant of renewal of lease, petitioner would not be necessary and proper party and that at this stage, petitioner has no *locus standi.* This Court cannot countenance the said submission. Almost simultaneously while revoking the grant of renewal of lease, third respondent also issued a notification under Rule 59(1)(a) of the Rules vide G.O.Ms.No.220, dt.17.5.1994. It is not denied that petitioner was one of the applicants seeking grant of lease in respect of mining area in question. It is also not denied that petitioner filed an application for impleadment in the revision application before first respondent, and petitioner was heard by first respondent before passing order impugned in this Writ Petition. Therefore, for the purpose of this case, there cannot be any objection if petitioner is also given opportunity to appear before third respondent while the matter is reconsidered.

In the result, for the above reasons, this Writ Petition is disposed of in the following manner.

i. There is no illegality or impropriety in first respondent remanding matter to third respondent for considering question of revocation of grant of renewal of lease to second respondent for non-compliance with the provisions of Rule 31 of the Rules; but it was improper for first respondent to make observations which tend to influence exercise of discretion by third respondent;

ii. While considering the question of grant of renewal of mining lease in favour of second respondent, third respondent shall take into consideration the events and proceedings before BIFR as well as the records of the case before first respondent under Rule 55(3) of the Rules, including comments submitted by State Government before Central Government;

iii. The petitioner and the second respondent shall appear before competent authority of the State Government with a copy of this order on 28.10.2004 whereupon, third respondent shall permit petitioner and second respondent to produce any additional material and dispose of the case within a period of four weeks thereafter; and

iv. There shall be no order as to costs.

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(V.V.S.RAO, J)

14.10.2004

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To

1 The Joint Secretary, Ministry of Mines (Revisional Authority),

Government of India, Shastry Bhawan, New Delhi-110 001.
2 The Secretary, Department of Industries and Commerce (Mines II),

Government of Andhra Pradesh, Secretariat, Hyderabad.
4 The Director of Mines and Geology, Welfare Centre, Masab Tank,

Hyderabad.
5 The Assistant Director of Mines and Geology, Maruthi Nagar,

Vijayawada, Krishna District, AP.

6 Two CCs to the Government Pleader for Industries, High Court

Buildings, Hyderabad (O.U.T)

7 Two C.D. Copies.